



USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: MAR 03 2008

U.S. Department of Justice

United States Attorney  
Southern District of New York

The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10017

February 28, 2008

BY FACSIMILE

The Honorable Paul A. Crotty  
United States District Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: United States v. Patrick O'Donoghue  
07-Cr. 989 (PAC)

Dear Judge Crotty:

It has come to the parties' attention that the sentence imposed on February 25, 2008, on the above-referenced defendant was illegal insofar as the Court imposed the six-month term of weekend imprisonment as a custodial sentence per se, to be followed by a two-year term of supervised release.

Title 18, United States Code, § 3563(b)(10) authorizes the Court to place a defendant in weekend custody of the Bureau of Prisons as a condition of a term of probation. Title 18, United States Code, § 3581, which governs sentences of imprisonment, however, does not provide for weekend imprisonment. Supervised release, pursuant to Title 18, United States Code § 3583, may be imposed only if it follows a term of imprisonment.

Accordingly, to effect Your Honor's sentencing objectives, the Government respectfully suggests, without objection from the defendant, that the Court impose a sentence of 30 months' probation, to include weekend custody during the first six months of probation.

Rule 35(a) of the Federal Rules of Criminal Procedure permits the Court to correct clear error in a sentence within seven days after sentencing. Under Rule 43(b)(4), a defendant need not be present when a "proceeding involves the correction or

Hon. Paul A. Crotty

-2-

February 28, 2008

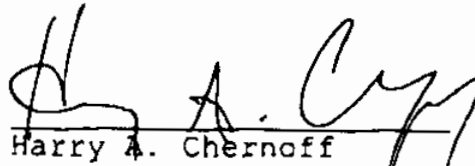
reduction of a sentence under Rule 35." Moreover, the defendant has indicated through counsel that, because he has no objection to the correction and amendment of his sentence, he waives any right he may have to be present for the proceeding.

Accordingly, the parties respectfully request that Your Honor amend the sentence and the judgment of conviction to correct the error set forth above without a further court appearance. The Government respectfully notes, however, that the sentence correction under Rule 35(a) must be accomplished within seven days of the imposition of sentence, i.e. by Wednesday, March 5, 2008.

Respectfully submitted,

MICHAEL J. GARCIA  
United States Attorney

By:

  
Harry A. Chernoff  
Assistant U.S. Attorney  
(212) 637-2481

cc: Gerald B. Lefourt, Esq. (by facsimile)  
Renato C. Stabile, Esq. (by facsimile)